

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF OKLAHOMA
3

4 RANDY BLAKE PATTERSON,

5 Plaintiff,

6 vs.

7 NATIONAL BOARD OF MEDICAL
8 EXAMINERS,

9 Defendant.
10
11

)
)
)
) No.
) CIV-15-1204-HE
)
)
)
)



12 VIDEOTAPE DEPOSITION OF RANDY BLAKE PATTERSON, I
13 TAKEN ON BEHALF OF THE DEFENDANT
14 IN OKLAHOMA CITY, OKLAHOMA
15 ON JUNE 29, 2016
16
17
18

19 REPORTED BY: KAREN B. JOHNSON, CSR
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21

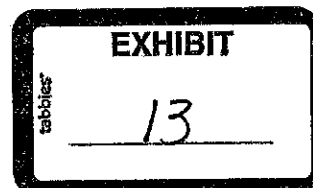


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REPORTING & VIDEO, INC.



Randy Patterson

June 29, 2016

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1 APPEARANCES	1 STIPULATIONS
2	2
3 For the Plaintiff:	3 IT IS HEREBY STIPULATED AND AGREED by and
4 Steve Clark	4 among the attorneys for the respective parties
5 Katie L. Templeton	5 hereto that the deposition of RANDY BLAKE PATTERSON,
6 Clark & Mitchell	6 I may be taken on behalf of the Defendant on the
7 101 Park Avenue, Suite 210	7 29TH of JUNE, 2016, in OKLAHOMA CITY, OKLAHOMA, by
8 Oklahoma City, Oklahoma 73102	8 Karen Johnson, Certified Shorthand Reporter for the
9 clark@clarkmitchell.com	9 State of Oklahoma, taken pursuant to Federal Rules
10 katie@clarkmitchell.com	10 of Civil Procedure.
11 For the Defendant:	11
12 Jack Dawson	12 *****
13 Miller Dollarhide	13
14 210 Park Avenue, Suite 2550	14
15 Oklahoma City, Oklahoma 73102	15
16 jdawson@millerdollarhide.com	16
17 Also Present:	17
18 Jim Langlois, Videographer	18
19 *****	19
20	20
21	21
22	22
23	23
24	24
25	25

1 (Pages 1 to 4)

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1 THE VIDEOGRAPHER: We are now on the
2 record. This is a videotape deposition taken of
3 Randy Blake Patterson. It is Wednesday, it's June
4 29th, the year is 2016, the time is approximately
5 10:02 a.m., and you may swear in the witness.

6 RANDY BLAKE PATTERSON, I,
7 after having been first duly sworn at 10:02 a.m.
8 deposes and says in reply to the questions
9 propounded as follows, to wit:

10 DIRECT EXAMINATION

11 BY MR. DAWSON:

12 Q Tell us your name, sir.

13 A Randy Blake Patterson, I.

14 Q Randy Blake Patterson?

15 A The first.

16 Q The first?

17 A Yes.

18 Q Is there a second?

19 A No.

20 Q Okay.

21 A I just wanted to be specific.

22 Q Okay. And it's Dr. Patterson?

23 A I'd say so.

24 Q Okay. Whenever -- what we do in
25 depositions is we kind of insist on the witness

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1 A Yes, that seems reasonable.

2 Q Okay. If you're like me, sometimes you
3 make a mistake, you give the wrong year or just make
4 a mistake in your testimony, if you determine today
5 that you made a mistake in an earlier testimony,
6 will you tell me about that?

7 A Yes.

8 Q Okay. Now, after the deposition's over,
9 you'll have the right and the opportunity to read a
10 transcript of your deposition, and if you notice
11 any -- anything you want to correct, I'm fine with
12 you, on an errata sheet, what we call an errata
13 sheet, your lawyers will explain this to you a lot
14 better than I am, okay, but I'm just telling you for
15 my purposes, just write down on the errata sheet, I
16 said so and so, I should have said so and so, okay?

17 A Yes.

18 Q And even after that, if you determine your
19 testimony's going to be different at trial, will you
20 tell your lawyers so they can tell me?

21 A I'll tell my counsel, yes.

22 Q Yeah.

23 A A question for you, so the language used
24 in a lot of the documents that have transpired
25 between counsel states as discovery progresses, and

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1 giving a -- a verbal or audible answer. When you
2 nod at me like that, I know what you're saying and
3 we can -- and we have a video that -- but the court
4 reporter doesn't have anything to nod -- to write if
5 you nod.

6 A Okay.

7 Q Okay? So if I -- if I ask you -- if -- if
8 you say, for instance, uh-huh, I may say, is that a
9 yes? I'm not trying to be a smart aleck, I'm just
10 trying to make a record, okay?

11 A I understand.

12 Q All right. Have you ever given a
13 deposition before?

14 A No, sir.

15 Q All right. You've had the opportunity to
16 visit with your lawyers about what a deposition is;
17 right? I'm not going to go into that conversation,
18 but you've had that opportunity?

19 A Yes.

20 Q Okay. Well, there's a couple of reasons I
21 want to take your deposition. First, I want to know
22 what your testimony's going to be at trial, does it
23 seem fair and reasonable to you that if I ask you
24 the same question at trial, that I'm going to get
25 the same answer at trial?

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1 so how is that handled with deposition? So if
2 something changes between the time my deposition is
3 taken and -- and the trial?

4 Q Then -- then you some way notify me that
5 your testimony's going to be different at trial.

6 A Yes, sir.

7 Q That's -- that's -- that's the whole
8 purpose of taking the dep --

9 A Okay.

10 Q That's not the whole purpose, but that's
11 the main purpose, okay?

12 A Yes, sir.

13 Q Okay. The other reason to take your
14 deposition is to educate myself, you know things
15 that I don't know, so I want to get an education.
16 The third is your testimony is very important.
17 Sometimes parties give their deposition and then
18 that testimony is used in motion practice, we file
19 motions before the Court and attach the testimony,
20 all right, sir?

21 A Yes, sir.

22 Q So the point is, your testimony's very
23 important and it can be used for those purposes.
24 Tell me a little bit about yourself, Dr. Patterson.
25 Give me a elevator speech about Dr. Patterson.

2 (Pages 5 to 8)

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1 have done so immediately.

2 Q Did you do anything to reschedule an exam?

3 A When the NBME's web administrator unlocked
4 my profile where I could navigate the portal and
5 select a test date, I absolutely did.

6 Q And when did you start doing that?

7 A When it became available to me.

8 Q And what -- tell me how you did that.

9 A You log into your account and select a
10 test date, and until the NBME clears you to do so,
11 you're not -- not able to do that.

12 Q So you log in and you select a test date
13 and test site?

14 A That's correct.

15 Q And -- and explain how that's done.

16 A There is a calendar, you -- you select a
17 city in which you wish to test, one of the five, and
18 then the month, and it displays the -- a calendar
19 for that month, and there's a legend of different
20 colors that indicate which test dates have
21 availability and those that are full to capacity,
22 and so you check the available dates and ideally
23 schedule an exam on a desired date that would allow
24 you to complete your testing, meet your graduation
25 requirements, and move forward with your education.

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1 Q And which site did you select?

2 A I selected the earliest available site, I
3 checked Philadelphia, Chicago, Atlanta, Houston and
4 Los Angeles, and Los Angeles was the earliest test
5 date I could get.

6 Q How many times did you attempt to or how
7 many times did you log in to select the test date?

8 A I don't recall.

9 Q Was it more than one?

10 A Yes.

11 Q More than ten?

12 A I don't recall.

13 Q Did you check in or log in every other
14 day, every day, once a week?

15 A No. I booked the earliest available test
16 date I could find.

17 Q After that, did you go back and try to
18 find -- did you recheck after you'd selected a date?

19 A No.

20 Q And so you retest approximately when?

21 A August 6th.

22 Q And when was the -- the match date?

23 A Sometime in March.

24 Q And are you -- is it your claim that the
25 only reason that you weren't matched is because you

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1 didn't have a -- a completed CS score?

2 A It's my claim that I wasn't given the same
3 consideration for a position in the match as a
4 student who could complete their licensing and
5 credentialing by July 1 and be ready to serve in a
6 house officer capacity. It's also my claim that the
7 complement of professional opportunities that were
8 available to me is very disparate to someone who
9 perhaps had tested on another day and whose exam or
10 administration of their exam proceeded without
11 complication.

12 MR. DAWSON: Would you kindly read back
13 the question that I asked?

14 COURT REPORTER: "And are you -- is it
15 your claim that the only reason that you weren't
16 matched is because you didn't have a completed CS
17 score?"

18 THE WITNESS: No.

19 Q (By Mr. Dawson) What were some of the
20 other reasons you didn't match?

21 A I don't know.

22 Q Do you take any personal responsibility
23 for anything you did that caused you not to match?

24 A No.

25 Q What are some of the other reasons you

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1 didn't match?

2 A I don't know any.

3 Q Sir?

4 A I don't know any.

5 Q What do you think that -- did you ever
6 receive an offer of any type of residency?

7 A So an offer as such is not permissible
8 conduct in the residency match, and so the residency
9 match is unlike industry in that if you interview
10 someone for your firm, Mr. Dawson, you like that
11 candidate, you can offer them the job, the match
12 doesn't work that way. And so it's blinded in a
13 sense both to applicants and the institutions who
14 are interviewing the candidates, and they submit a
15 list of preferences and those preferences are run
16 through a computer algorithm and if there's a -- a
17 match between the candidate and the institution,
18 then they've secured a position at that institution.

19 Q Did any institution rank you?

20 A That's also blinded, I don't know the
21 answer to that question.

22 Q Was there any opportunity for you to enter
23 into a residency program with any institution?

24 A Students who don't match during the
25 primary match can seek out residency positions off

7 (Pages 25 to 28)

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1 cycle, and so the residency match happens once a
2 year, it's like admissions to graduate school, law
3 school, medical school, whatever. So if you miss
4 the application window, you can't be admitted to law
5 school off cycle in October or November, so on and
6 so forth, you have to wait until the next academic
7 year rolls around. The match works in that manner.

8 However, some institutions will have
9 unexpected vacancies where someone who did secure a
10 match to their position or to their institution,
11 rather, is, for whatever reason, unable to fulfill
12 their obligations and that creates an unexpected
13 vacancy, and those opportunities are pretty few and
14 far between and are mostly found by internal
15 candidates. So my best opportunity to find an
16 off-cycle vacancy would be if I had heard about
17 something through the grapevine at the University of
18 Oklahoma, since I am plugged into that network, you
19 know, a student at Parkland in Dallas would, you
20 know, have the opportunity to fill a vacancy, a
21 similar vacancy before it's ever even listed or
22 announced, so.

23 Q So did you get an opportunity to
24 participate in any residency program?

25 A I have not.

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1 Q Did you have any contact with any
2 university in, say, Kansas that suggested to you
3 maybe they could offer you a residency program?

4 A No, I can't think of one in Kansas.

5 Q Okay.

6 A There was a program in North Carolina that
7 interviewed me off cycle that they filled with
8 another candidate. They interviewed several
9 candidates.

10 Q And what do you believe are your damages
11 as a result of whatever claim you're making against
12 National Board of Medical Examiners?

13 A Lost life years.

14 Q Sir?

15 A Lost life years, the opportunity to
16 complete my education, the balance of my student
17 loans, plus interest, attorney's fees, lost earning.

18 Q And tell me about the lost earnings. What
19 are they? Do you have a figure in mind for lost
20 earnings?

21 A My student loan balance stands at 300,000,
22 I've had to borrow additional funds because of the
23 predicament that the NBME's put me in to pursue an
24 education in dentistry, that's additional life years
25 where I would otherwise be practicing medicine that

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1 I'm in dental school relearning a second profession.
2 And so my net -- or my aggregate lifetime economic
3 loss is substantial.

4 Professional careers are very valuable and
5 that's why they're very desirable, you know,
6 competition is very tough to get into a graduate
7 school. So, you know, when I was admitted to
8 medical school, I thought I'd have a job for the
9 rest of my life. I've been living foot to mouth for
10 the last three years with a medical degree. I'm
11 unable to make the payments on my student loans
12 because that balance is substantial. I was one of a
13 handful of Oklahoma academic scholars at Bishop
14 McGuinness High School, and I did well in college
15 and I was accepted early to medical school. I never
16 thought I would be in a position where I'm in a
17 incredible financial peril, I have no access to
18 credit, no one will hire me because I'm
19 simultaneously overqualified for any entry level
20 position in the work force, but I'm underqualified
21 to do what I've spent years of my life training to
22 do. My damages are in excess of a million dollars.

23 Q Do you have any estimate of the amount of
24 your lost earnings?

25 A If I were in residency right now and not a

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1 dental student, I would be in my fourth year, so
2 I've lost three years of resident's salary, but if I
3 were to begin residency training tomorrow, those
4 three lost years don't -- that net loss isn't just
5 the compensation while on residency, that would also
6 alter my entry point into practice as a -- as an
7 attending physician by three years, so I've lost
8 money with regard to lifetime economic loss on the
9 front end and the back end, and so I -- I have fewer
10 years to pay off the balance of my loan. They've
11 accrued additional years of interest that they
12 wouldn't otherwise. I have fewer years to save for
13 retirement and this has altered my economic outlook
14 considerably.

15 Q Let me try it this way, how much money
16 were you going to make as a doctor, a medical
17 doctor?

18 A It's variable depending on what specialty
19 you match into.

20 Q How much money are you going to make as a
21 dentist?

22 A That's also variable. Dentistry is --
23 professional dentistry is like any other profession
24 in that if you're so inclined, you work more, you
25 make more. Some dentists work fewer hours, so

8 (Pages 29 to 32)

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<p>1 that's a function of -- of how -- how much you work.</p> <p>2 Q Okay. Do you have any dollar figure you</p> <p>3 could put on the difference between what you are</p> <p>4 going to make as a dentist versus what you would</p> <p>5 have made as a medical doctor?</p> <p>6 A Well, it's going to cost me 250 grand in</p> <p>7 student loans to become a dentist at 7 percent</p> <p>8 interest, four lost years of earning as a physician.</p> <p>9 The average physician in the United States makes</p> <p>10 around \$198,000 to \$220,000 a year, depending on</p> <p>11 whether they are a proceduralist or a cognitive</p> <p>12 specialist, like an internist or a pediatrician. So</p> <p>13 if you take that average and multiply it times four,</p> <p>14 add the balance of my additional loans that I've</p> <p>15 incurred, that's a considerable change in my</p> <p>16 economic outlook.</p> <p>17 Q Where did you get the figures 198,000 to</p> <p>18 220,000?</p> <p>19 A So there are a number of resources that</p> <p>20 publish data like this, Medscape is one, the Merritt</p> <p>21 Hawkins Index is another, Market Average, Becker's</p> <p>22 Hospital Review also keeps data, and so depending on</p> <p>23 the resource you use, those numbers vary.</p> <p>24 Q When you apply for a residency program,</p> <p>25 would one of the factors that the residency program</p>	<p>1 record)</p> <p>2 Q (By Mr. Dawson) Let me show you what I've</p> <p>3 marked as Defendant's Exhibit Number 2. I'll just</p> <p>4 tell you we got this from OU Health Science Center</p> <p>5 and some kind of a memo signed by Dr. Herman Jones,</p> <p>6 you know Dr. Jones?</p> <p>7 A I do.</p> <p>8 Q It tells us that you failed OB-GYN shelf</p> <p>9 and didactics. Tell me what shelf and didactics</p> <p>10 means.</p> <p>11 A So each department maintains an in-house</p> <p>12 examination that tests the core content of that</p> <p>13 discipline, so obstetrics has its own exam, its own</p> <p>14 shelf exam, surgery has its own shelf exam,</p> <p>15 pediatrics and the like.</p> <p>16 Q What is a shelf exam?</p> <p>17 A It's just an examination that is</p> <p>18 administered at the end of the clerkship, testing or</p> <p>19 during the clerkship, while it's in progress,</p> <p>20 testing the subject matter of that specialty in</p> <p>21 medicine.</p> <p>22 Q What is -- what is meant by didactics?</p> <p>23 A You don't know what that word means?</p> <p>24 Q I get to ask the questions, Doctor,</p> <p>25 respectfully. I'm going to answer that question.</p>
Page 34	Page 36
<p>1 look at be the grades you made in medical school?</p> <p>2 A I'm sure that's a part of their analysis.</p> <p>3 They're more interested in the clinical grades than</p> <p>4 they are the grades that were earned in the didactic</p> <p>5 years of biochemistry, so on, so forth. I'm sure</p> <p>6 they look at a variety of things.</p> <p>7 Q One of them would be the grades that you</p> <p>8 make in the classes that you take?</p> <p>9 A Presumably.</p> <p>10 Q Correct? Well, you say "presumably,"</p> <p>11 have -- have you talked to advisors there at the OU</p> <p>12 School of Medicine about what residency programs</p> <p>13 look at?</p> <p>14 A I have, but I've never personally sat on a</p> <p>15 residency committee or been on the other end of</p> <p>16 evaluating prospective candidates for a residency</p> <p>17 program, so I can't speak to the nuances of how</p> <p>18 candidates are evaluated.</p> <p>19 Q And the advisors that you spoke to, did</p> <p>20 they tell you that the grades that you make in class</p> <p>21 are something that the residency programs are going</p> <p>22 to look at?</p> <p>23 A It's part of their analysis.</p> <p>24 (Defendant's Exhibit Number 2 marked for</p> <p>25 identification and made part of the</p>	<p>1 A Okay.</p> <p>2 Q The answer is, no, I don't know what it</p> <p>3 means, I'm asking you to tell me what didactics</p> <p>4 means.</p> <p>5 A So didactic is a lecture, a lecture</p> <p>6 component, and so the rotations, the clerkships,</p> <p>7 rather, have different competencies, and among these</p> <p>8 are your clinical competencies wherein you're</p> <p>9 evaluated by the instructors and the people who come</p> <p>10 into contact with you while you're rotating through</p> <p>11 your -- the different departments, that's a</p> <p>12 component of your grade, but there's also an</p> <p>13 academic component to your grade or, you know, a</p> <p>14 written test, reading, all those things are</p> <p>15 didactic.</p> <p>16 Q Well, I apologize, I don't understand --</p> <p>17 or the written test, is that part of the word</p> <p>18 "didactics" or is that the shelf test?</p> <p>19 A That's the didactic component.</p> <p>20 Q Okay.</p> <p>21 A The shelf exam, There's the didactic</p> <p>22 component and a clinical component.</p> <p>23 Q All right.</p> <p>24 A And a professionalism component.</p> <p>25 Q How -- how important do you think the</p>

9 (Pages 33 to 36)

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1 program, you know, indicated to me expressly this is	1 D & R Reporting & Video, Inc.
2 why we didn't choose you, or whatever, just because	2 400 North Walker, Suite 160
3 that's not customary.	3 Oklahoma City, Oklahoma 73102
4 MR. DAWSON: That's all.	4 (405) 235-4106
5 MR. CLARK: No questions. We'll read and	5 FAX (405) 235-4115
6 sign.	6 Correction Sheet
7 THE VIDEOGRAPHER: We're off the record,	7 Witness: RANDY BLAKE PATTERSON, I Reporter: KBJ
8 the time is 1:40 p.m.	8 Attorney: JACK DAWSON, 210 PARK AVE., STE. 2550,
9 (Deposition adjourned at 1:40 p.m.)	9 OKC, OK 73102 Date: 6-29-16
10 *****	10 OA: STEVE CLARK
11	11 Case Style: PATTERSON v. NBME; CIV-15-1204-HE
12	12 Page Line Correction Reason for Correction
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Page 94	Page 96
1 JURAT PAGE	1 CERTIFICATE
2	2
3 I, RANDY BLAKE PATTERSON, I, do hereby	3 STATE OF OKLAHOMA)
4 state under oath that I have read the above and	4) SS:
5 foregoing deposition in its entirety and that the	5 COUNTY OF OKLAHOMA)
6 same is a full, true and correct transcript of my	6
7 testimony so given at said time and place, except	7 I, Karen B. Johnson, Certified Shorthand
8 for the corrections noted.	8 Reporter, within and for the State of Oklahoma, do
9	9 hereby certify that RANDY BLAKE PATTERSON, I was by
10	10 me first duly sworn to testify the truth, the whole
11	11 truth, and nothing but the truth in the case
12	12 aforesaid; that the above and foregoing deposition
13	13 was by me taken in shorthand and thereafter
14	14 transcribed; that the same was taken on JUNE 29,
15	15 2016, that the deposition was taken in OKLAHOMA
16	16 CITY, State of Oklahoma; that I am not an attorney
17	17 for nor a relative of any said parties or otherwise
18	18 interested in the event of said action,
19	19 IN WITNESS WHEREOF, I have hereunto set my
20	20 hand and seal of office on this 8TH day of JULY,
21	21 2016.
22	22
23	23
24	24
25	25

24 (Pages 93 to 96)